In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 964

JAMES RUSSELL HAWTHORNE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

An indictment returned in the United States District Court for the Southern District of West Virginia charged petitioner in one count with traveling from Indiana to West Virginia with intent to carry on an illegal gambling enterprise, and in a second count with using an interstate facility with intent to distribute the proceeds derived from an unlawful gambling enterprise, in violation of 18 U.S.C. 1952. After a jury trial, petitioner was convicted on both

counts on November 25, 1964, and sentenced to concurrent five-year terms of imprisonment. On appeal, the conviction on the first count was reversed on the ground that the travel specified therein, for the immediate purpose of moving petitioner's family, was not sufficiently related to petitioner's West Virginia gambling enterprise to bring it within the interdiction of the statute. The court determined that petitioner had been properly convicted under the second count on proof that he knowingly caused the transmittal in interstate commerce by Western Union of the proceeds derived from the operation of slot machines in Indiana, rejecting the contention that the federal statute required a finding that he knew that he was violating the Indiana law by operating the slot machines—a finding which the evidence would have supported. While affirming the conviction on the second count, the court remanded for reconsideration of the sentence in light of the reversal on the first count (Pet. App. A; 356 F. 2d 740 (C.A. 4), certiorari denied, 384 U.S. 908).

On remand, the district court, after a hearing, entered an order on May 23, 1966, reducing petitioner's sentence from five to two years (R. 16-18). Petitioner appealed from this judgment, contending that remarks of the district court in re-sentencing demonstrated bias aganst him. The court of appeals affirmed the sentence *per curiam* (Pet. App. B).

1. There is no substance to petitioner's assertion that the district court expressed such personal bias against him at the hearing on remand as to affect the sentence on the second count. The full transcript (R.

30-33) shows that the remarks made by the judge were expressions of doubt concerning the purpose of the court of appeals' remand and not expressions of personal animosity to petitioner. The record reflects the judge's determination not to permit those doubts to influence his decision regarding petitioner's sentence. Indeed, the judge reduced petitioner's sentence by more than half after careful consideration of the appellate opinion, the presentence investigation and the statements of counsel.

2. There is no occasion for this Court to reconsider the question whether 18 U.S.C. 1952, in punishing the use of interstate facilities with the intent to distribute the proceeds of an illegal gambling enterprise, also requires proof of an intent to violate State law. That precise issue was before this Court in petitioner's prior petition for a writ of certiorari, and it was answered by our brief in opposition. See *Hawthorne* v. *United States*, No. 1082, O.T. 1965. We noted there that an intent to violate any particular State law is not an element of the offense. Such an intent is not expressly contemplated by the statute, and there is no sound basis for including it as part of the offense by implication. A major purpose of the statute was to impede multistate criminal operations by closing the channels of interstate commerce to the knowing distribution of profits arising from the defined "unlawful activities." In seeking this end, Congress—cognizant of the nature of multistate criminal organizations—considered it immaterial whether the persons intentionally using these channels for the pro-

scribed purpose were personally guilty of violating the State law which rendered the underlying activity unlawful. Adopting the Attorney General's statement in support of the bill, the Senate Report on Section 1952 stated that "only the Federal Government can shut off the funds which permit the top men of organized crime to live far from the scene and, therefore, remain immune from the local officials. So we believe that the Federal Government has a definite responsibility to move against these people and limit their use of interstate commerce." S. Rep. No. 644, 87th Cong., 1st Sess., p. 3. The showing that petitioner wilfully caused the use of an interstate facility with the intent to distribute the profits of an unlawful activity—*i.e.*, the operation of slot machines in Indiana—and thereafter did distribute those profits is sufficient to make out a violation of 18 U.S.C. 1952.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

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